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THE SUPREME COURT OF THE UNITED STATES

No. ~~3835~~ 37

October Term, 1930.

THE LOUISIANA
PUBLIC SERVICE COMMISSION, et als.,
Appellants,

vs.

UNITED STATES OF AMERICA, et als.,

Appeal from United States District Court, Eastern District of Louisiana, Baton Rouge Division.

STATEMENT AS TO JURISDICTION UNDER RULE 12.

PERCY SAINT.
WYLIE M. BARROW.
LEWIS L. MORGAN.
MICHEL PROVOSTY.
Solicitors for Appellants.

WYLIE M. BARROW,
Of Counsel.

RANIRES-JONES, BATON ROUGE

THE SUPREME COURT OF THE UNITED STATES

No. 805

October Term, 1930.

THE LOUISIANA PUBLIC SERVICE COMMISSION, et als.,
Appellants,

vs.

UNITED STATES OF AMERICA, et als.,

STATEMENT AS TO JURISDICTION UNDER RULE 12.

MAY IT PLEASE THE COURT:

In support of the jurisdiction of this Court to review the above entitled cause on appeal the appellants respectfully represent:

I.

This appeal is brought direct to the Supreme Court under the provisions of the Act of February 13, 1925, 43 Stat. at L. 936, 938 Chapter 229 (United States Code, Title 28, Sec. 345) which provides that Sec. 238 of the Judicial Code is amended to read in part as follows:

"A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following sections, and not otherwise . . .

"(4) So much of 'an act making appropriations . . . for the fiscal year 1913, and for other purposes,' approved October 22, 1913, as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend, or set aside orders of the Interstate Commerce Commission other than for the payment of money . . ."

The jurisdiction granted to the Commerce Court by the Act of June 18, 1910, (36 Stat. at L. 539, Chap. 309 U. S. C. Title 28, Section 41,) was transferred to the district courts by the act of October 22, 1913, (38 Stat. at L. 219, 220, Chap. 32), and provided for review by the Supreme Court of the causes included within the jurisdiction of the Commerce Court, as follows:

> "First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.
>
> "Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part, any order of the Interstate Commerce Commission . . . ." Also under Section 47a, (U. S. Code Sup. 111), District Court Jurisdiction Act, approved June 18, 1910, c. 309, sec. 2, 36 Stat. 542; March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; Oct. 22, 1913, c. 32, 38 Stat. 220, 4 I. C. C. Act, annotated 3126, which provided in part as follows:

"A final judgment or decree of the district court in the cases specified in Section 44 of this title may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity."

II.

The decree sought to be reviewed was entered on the 11th day of June, 1930. (R-Vol. I, 1,400.) The applications for appeal were presented on the 1st day of July, 1930. (R-Vol I, 1,401.)

III.

This is a case in which the State of Louisiana, and the Louisiana Public Service Commission seek to enjoin in part the order of the Interstate Commerce Commission made and entered on the 3rd day of June, 1929, and orders supplementary thereto, in the proceeding entitled "No. 17,000, *Rate Structure Investigation, Part 11, Sand and Gravel*, which embraced Docket No. 16,002 *R. A. Gibson v. Kansas City Southern Ry. Co., et als.*, and No. 18,702, *Tennessee-Arkansas Gravel Co. v. Missouri Pacific Railroad Company, et als.*, and various other dockets consolidated therewith. (155 I. C. C. 247, R-17, et seq.)

The United States was named as defendant, (R- Vol. 1, bill of complaint, R- 2, 13, 14); Interventions were filed by the Interstate Commerce Commission, (R- Vol. 1, 117); the Texas & New Orleans Railroad Co., and twenty four other

railroads, (R-, Vol. 1, 107); the Louisiana Highway Commission, (R- Vol. 1, 83); and the City of New Orleans, (R- Vol. 1, 90). Answers were filed by the United States, (R- Vol. 1, 119), and by the Interstate Commerce Commission. (R- Vol. 2, 124.)

The said orders of the Commission prescribe both interstate and intrastate rates for the entire portion of the State of Louisiana, west of the Mississippi River, including points on the east bank thereof, known as western Louisiana, but this suit attacks only the said orders and rates insofar as they apply in so-called western Louisiana which lies south of the Vicksburg, Shreveport & Pacific Railway, (part of the Illinois Central system), including points on the east bank of the Mississippi River.

This case was consolidated in the lower Court with equity suit No. 194, entitled, *"Texas & New Orleans Railroad Company, et als., v. Louisiana Public Service Commission,"* and the two cases were heard together and separate decrees entered therein. (R-Vol. 1, 130.) An appeal was also taken in said case No. 194, and was docketed as No. 804, October term, 1930, on the docket of the Supreme Court.

The application was for a perpetual injunction after final trial. (R-Vol. I, 12, 13, 14.)

After hearing the consolidated cases, the specially convened court of three judges filed their opinion (R-Vol. I, 1397), 41 Fed. (2nd) 293, and entered the decree refusing

the injunction as prayed for, and dismissed the bill. (R-Vol. I, 1400.)

The appellants principally rely on the lack of power and authority in the Interstate Commerce Commission to make and enforce its orders interfering with intrastate rates on sand, gravel, crushed stone, and shell in western Louisiana, on and south of the line of the Vicksburg, Shreveport & Pacific Railway, including points on the east bank of the Mississippi River, where there is no evidence before the said Commission to support an order interfering with valid intrastate rates, and particularly where there was no finding by the Commission, statement of the evidence by the Commission, or reference to evidence before the Commission to support such a finding, showing:

(1) The cost of the service in transporting sand, gravel, crushed stone and shells, and related commodities. 155 I. C. C. 276, R-17, et seq.

(2) The cost of the service of performing the ferry transfers across the Mississippi River. 155 I. C. C. 247, R-17, et seq.

(3) An unjust discrimination against interstate shippers or localities, except at points in southern Arkansas, and as to them only at points in the State of Louisiana on and north of the Vicksburg, Shreveport & Pacific Railway. 155 I. C. C. 273, 279, R-17, et seq.

(4) An undue preference of or advantage to any interstate shipper or locality in the State of Louisiana, growing

out of the relation of interstate and intrastate rates on sand and gravel, etc., except shippers and localities in that portion of western Louisiana on and north of the line of the Vicksburg, Shreveport & Pacific Railway, (now part of the Illinois Central System," and designated as "northern Louisiana), (155 I. C. C. 273, 279, R-17, et seq.)

(5) That there is or has been any substantial interstate traffic between points in states adjoining the State of Louisiana and points in western Louisiana, except from a few points in southern Arkansas to a few points in northern Louisiana near the border of said state. (I. C. C. 247, et seq. R-17, et seq.)

(6) That the intrastate rates in western Louisiana could be used to reduce or defeat any interstate rates as prescribed by the Commission. (155 I. C. C. 247, et seq., R-17 et seq.)

(7) That the carriers operating in, or serving, western Louisiana territory as described were in need of additional revenues.

(8) That the said intrastate rates are unremunerative, or that the rates prescribed by the commission will produce additional revenue. (155 I. C. C. 247, et seq., R-17 et seq.)

(9) The Interstate Commerce Commission is authorized to remove discriminations as between the States themselves, as it sought to do in this case. (155 I. C. C. 282, R-17.

(10) That there was any investigation or finding by said Commission of the needs of the carriers under Section 15a of the Interstate Commerce Act, as amended by the Transportation Act, 1920, or any amendments thereto.

(11) There was no evidence before, or investigation or finding by, the Commission, or reference in its report and orders to evidence, relating to the cost of ferry transfers across the Mississippi River at New Orleans, Harahan, Baton Rouge, and Angola, Louisiana, and Natchez, and Vicksburg, Mississippi. (155 I. C. C. 274, et seq., R-17, et seq.)

(12) The order of the Commission arbitrarily fixes a separate ferry transfer charge at Vicksburg and Natchez, Mississippi and Angola, Baton Rouge, Harahan, and New Orleans, Louisiana, when in fact said ferry transfers are integral parts of the continuous lines of plaintiffs' railways, owned, operated, leased, or used by them in their continuous transportation of freight from points on the east bank of said river and points west thereof, and the said Commission was and is without power or authority to separate said railroads into separate and distinct parts, and fix rates for each part thereof, and apply arbitrary charges for any particular part thereof. (R-17, et seq.)

(13) The said orders also arbitrarily fix divisions or apportionments of joint rates by fixing separate ferry charges for ferry transfers at New Orleans, Harahan,

Baton Rouge, and Angola, Louisiana, and Natchez, and Vicksburg, Mississippi, without finding that such divisions or apportionments of joint rates are necessary and desirable in the public interest, and without investigating the efficiency with which the carriers concerned are operated, or the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railroad property held and used in the service of transportation and the importance to the public of the transportation service of such carriers; and also whether any particular participating carrier is an original, intermediate, or delivering line or any other fact or circumstance which would ordinarily, without regard to mileage haul, entitle one carrier to a greater or lesser proportion than another carrier of the joint rate or charge, and is, therefore, in violation of section 15 (6), of the Interstate Commerce Act, as amended.

(14) The order No. 675, of the Louisiana Public Service Commission adopted on October 12, 1929, (R-78), is legal, valid, and binding, and was made by said Commission with full power and authority vested therein by the Constitution and Laws of the State of Louisiana, and the reasonableness of said order has not been attacked in any court of competent jurisdiction or elsewhere.

(15) The order No. 675, of October 12th, 1929, of the Louisiana Public Service Commission (R-78), removed all unjust discrimination or undue prejudice against interstate

commerce shown by the evidence before the Interstate Commerce Commission to exist against shippers and localities in the State of Arkansas and in favor of Louisiana intrastate shippers and localities, and against interstate commerce in northern Louisiana, which is the only territory in Louisiana where there was any real discrimination against interstate commerce in respect to the commodities involved.

(16) The ferry transfer charge arbitrarily fixed by the Interstate Commerce Commission in its said order at 8 cents per ton, amounting to a minimum of $4.00 per car, applicable on traffic between the ports of the State of Louisiana and points in Arkansas, Oklahoma, Texas, and western Louisiana, while no such arbitrary transfer charge or toll is applicable from points in said State to the ports of the State of Texas, gives to the ports of one State a preference over those of another, in violation of Article 1, Section 9, paragraph 6, of the Constitution of the United States.

D.

The following decisions are believed to sustain jurisdiction of this appeal:

St. Louis O'Fallon R. R. Co. vs. United States, 279 U. S. 461, 49 Sup. Ct. Rep. 384, 73 L. Ed. 798.
Baltimore & Ohio R. R. Co. vs. United States, 277 U. S. 291, 48 Sup. Ct. Rep. 520, 72 L. Ed. 885.
Virginian R. Co. vs. United States, 272 U. S. 658 672, 71 L. Ed. 463, 471, 47 Sup. Ct. Rep. 222.

Arkansas R. R. Co. vs. Chicago, R. I. & P. R. Co., 274 U. S. 597, 71 L. Ed. 1224, 47 Sup. Ct. Rep. 724.
Wisconsin vs. C. B. & Q. R. R. Co., 257 U. S. 563, 566, 66 L. Ed. 371, 42 Sup. Ct. Rep. 232.
State of New York v. United States, 257 U. S. 591, 66 L. Ed. 385, 42 Sup. Ct. Rep. 239.
State of Florida vs. United States .... U. S. ...., ... Adv. Ops. ...., 72 L. Ed. (Decided Jan. 5, 1931.)

We respectfully submit that this Court has jurisdiction of the appeal by virtue of the Act of October 22, 1913, Chap. 32, 38 Stat. at L. 219, 220, Act of February 13, 1925, Chap. 229, 43 Stat. at L. 936, 938, United States Code Title 28, Sec. 345, amending Sec. 238 of the Judicial Code.

Respectfully submitted,

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NOTE: All references to the record are to the pages of the certified unprinted record prepared by the Clerk of the District Court, Eastern District of Louisiana, and on file with the Clerk of this Court. The record has not yet been printed.